

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3202 OF 2005

Mrs. Pushpa Laxman Shinde .. Petitioner

V/s

Union of India & Ors. .. Respondents

Mr.Neel Helekar for the Petitioner.

Mr.Vinay Masurkar for the Respondents.

CORAM : H.L. GOKHALE & J.H. BHATIA, JJ.

DATE : 8TH JUNE 2006

ORAL JUDGMENT: (Per H.L. Gokhale, J.)

1. Heard Mr.Helekar in support of this petition.
Mr.Masurkar appears for the Respondents.

2. The petition seeks a correction of date of birth of the Petitioner. For that purpose, it seeks to challenge and set aside the order dated 16th March 2005 passed by Respondent No.5 rejecting the Petitioner's representation.

3. Rule. Rule is made returnable forthwith. The Respondents have already filed a reply. We have gone through the petition as well as the reply.

4. The Petitioner is working as a Telephone Operator under Respondent No.4. It is her case that when she joined this service under Respondent No.4, she gave her date of birth as 1st June 1963 on the basis of her school leaving certificate. She joined the services in the year 1988. It is her further case that in 1990 when she gave birth to her child and when an entry was to be made with respect to her date of birth, she applied to the Nasik Municipal Corporation for a birth extract. As per that birth extract, it was seen that her date of birth was 1st August 1964. On coming to know this, she applied for correction of date of birth from 1st June 1963 to 1st August 1964. That application was given on 18th December 1990. The relevant Rule No.281 of the Posts and Telegraph Department requires the employee concerned to make an application, if necessary, within 5 years of the entry into government service. That is the provision in clause (a) of the relevant Rule No.281. It is the case of the Petitioner that she had applied accordingly and in fact the letter dated 7th January 1998 by the Sub-Divisional Engineer, Nasik Telecom annexed at Exhibit A-4 to the reply of the Respondents supports the case of the Petitioner. This letter, which is addressed to the Assistant General Manager (Staff) records in para 2 that the Petitioner

had applied for the change of her date of birth with all necessary documents which included her birth certificate from the Nasik Municipal Corporation. In para 3, it states that as per the rule, the official concerned has requested for change of date of birth from 1st June 1963 to 1st August 1964. In the next para, it is further stated that "the date of appointment of the official is 7.4.1988 and the application for change in birth date is received within the prescribed time limit, hence the alteration in date of birth can be sanctioned. You are therefore requested to examine the case and take necessary action under intimation to this office."

5. It however appears that the authorities concerned did not accept this request and further correspondence went on and finally on 16th March 2005, the Petitioner has been informed that her claim was not tenable. The reason given in this order is as follows:-

"In this connection, I am directed to inform you that your case has been examined in detail in BSNL Head Quarter, New Delhi. You were aware of the date of birth written in your record as back as 1980, whereas your date of appointment in Government service is in the year 1988. Hence there was ample time for you to get your date of

birth changed during the period between 1980 and 1988."

6. Mr.Helekar for the Petitioner submits that the reason given in the above paragraph is in fact not tenable. The above quoted paragraph says that the Petitioner was aware about her correct date of birth way back in 1980 and, therefore, she should have given the same when she joined the service in 1988. Mr.Helekar submits that obviously what is stated in this para is wrong. If the Petitioner was knowing the correct date of birth in 1988, surely she would have given it in 1988 itself. The occasion to correct the record arose mainly because the Petitioner had given an erroneous date while joining in service and within 2 years thereafter she has applied for correction. That is in fact accepted in the Sub-Divisional Engineer's letter dated 7th January 1998 addressed to the Assistant General Manager (Staff) which is placed on record by the Respondents themselves.

7. Mr.Masurkar for the Respondents opposed this petition by stating that what is stated in the letter dated 16th March 2005 should be accepted. He further stated that the record of Respondent No.4 had been burnt down in a fire in the meanwhile. However, the fact remains that the Respondents' own letter dated 7th

January 1998 annexed to their reply supports the case of the Petitioner. In view of that letter, it is clear that the Petitioner had given the birth extract from the Municipal Corporation to the Respondents within 5 years. That being so and considering that it is a document which is a prior document, obviously she is entitled to the correction in the record.

8. In the circumstances, we allow this petition, set aside the order dated 16th March 2005 and direct the Respondents to correct the service record of the Petitioner and enter her date of birth as 1st August 1964 in place of 1st June 1963.

9. Rule is made absolute as above with no order as to costs.

(H.L. GOKHALE, J.)

(J.H. BHATIA, J.)